Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	**DA 96-158**
	)	
Southwestern Bell Telephone Company	)	
	)	
Revisions to Tariff F.C.C. No. 73	)	
	)	
Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport	)	Transmittal No. 2524 CC Docket No. 94-97, Phase II

SUPPLEMENTAL DESIGNATION ORDER

Adopted: January 24, 1997; Released: January 24, 1997

Filing Schedule:

Direct Case: February 7, 1997
Oppositions/Comments: February 14, 1997
Rebuttal: February 21, 1997

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On December 14, 1995, Southwestern Bell Telephone Company (SWB) filed Transmittal No. 2524,[1] which included a provision stating that SWB will replace all interconnector-designated equipment (IDE) that fails, unless instructed otherwise by the interconnector, and that the interconnector will be responsible for the payment of all nonrecurring charges for the replacement of out-of-warranty IDE.[2] MFS Communications Company (MFS) and MCI Telecommunications Corporation (MCI) filed petitions to reject, or

[1] Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2524, filed Dec. 14, 1995 (*SWB Tariff*).

[2] *Id.* at § 25.2.1(C)(7).

alternatively, to suspend and investigate, Transmittal No. 2524, and SWB filed a response.[3] On April 4, 1996, the Common Carrier Bureau (Bureau) released the *SWB Tariff Suspension Order*, which suspended SWB Transmittal No. 2524 and imposed an accounting order.[4] In the *SWB Tariff Suspension Order*, the Bureau concluded that SWB Transmittal No. 2524 raises issues related to the ongoing virtual collocation tariff investigation initiated in the *Phase II Designation Order*,[5] and, therefore, should be folded into that investigation.[6] The Bureau stated that it would issue a Supplemental Designation Order for those issues not discussed in the *Phase II Designation Order*. Accordingly, in this Order, we designate additional issues with regard to SWB Transmittal No. 2524 as part of Phase II of our investigation of the interim and permanent virtual collocation tariffs.

II. BACKGROUND

A. General

2. On September 1, 1994, Tier 1 local exchange carriers (LECs) filed both interim and permanent virtual collocation tariffs with supporting cost information. Following a preliminary review of the LECs' interim tariffs, the Bureau concluded that these tariffs raised significant questions of lawfulness that warranted suspension for one day, investigation, and the imposition of an accounting order.[7] The Bureau later released the *Virtual Collocation Tariff Suspension Order*,[8] finding that the LECs' permanent virtual collocation tariffs also warranted suspension, investigation, and the imposition of an accounting order.

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[3] Petition of MFS Communications Company to Reject, or Alternatively, to Suspend and Investigate, Proposed Tariff Revisions in Southwestern Bell Telephone Company Transmittal No. 2524, filed January 11, 1996 (*MFS Petition*); Petition of MCI Telecommunications Corporation to Reject, or Alternatively, to Suspend and Investigate, Proposed Tariff Revisions in Southwestern Bell Telephone Company Transmittal No. 2524, filed January 11, 1996 (*MCI Petition*); Response of Southwestern Bell Telephone Company to the Petitions to Reject, or Alternatively, to Suspend and Investigate, Proposed Tariff Revisions in Southwestern Bell Telephone Company Transmittal No. 2524, filed January 25, 1996 (*SWB Response*).

[4] Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2524, DA 96-501, Order, 11 FCC Rcd 11500 (Com. Car. Bur. 1996) (*SWB Tariff Suspension Order*).

[5] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase II, Order Designating Issues for Investigation, 10 FCC Rcd 11116 (Com. Car. Bur. 1995) (*Phase II Designation Order*).

[6] *SWB Tariff Suspension Order*, 11 FCC Rcd at 11503.

[7] Ameritech Operating Companies et al., CC Docket No. 94-97, Order, 9 FCC Rcd 5230 (Com. Car. Bur. 1994) (*Virtual Collocation Interim Suspension Order*).

[8] Ameritech Operating Companies et al., CC Docket No. 94-97, Order, 10 FCC Rcd 1960 (Com. Car. Bur. 1994) (*Virtual Collocation Tariff Suspension Order*).

3. Subsequently, in the *Phase I Designation Order*, the Bureau designated two specific rate level issues for investigation: (1) whether the overhead loadings established in the LECs' interim and permanent virtual collocation tariffs were justified; and (2) whether the maintenance-related charges in Bell Atlantic's interim and permanent virtual collocation tariffs were justified.[9] In the *Phase I Report and Order*, the Commission reviewed the data in the record, including the parties' responses to the *Phase I Designation Order*, and concluded that most LECs had failed to demonstrate that their overhead loading levels and virtual collocation rates were just and reasonable.[10] The Commission, therefore, prescribed maximum permissible overhead loading levels to facilitate the goal of promoting increased competition in interstate access service markets.

4. In the *Phase II Designation Order*, released on September 19, 1995, the Bureau designated additional issues regarding rate levels, rate structures, and terms and conditions of service for the second phase of its investigation.[11] In that Order, the Bureau directed LECs to supply detailed information concerning the charges for the provision, installation, and maintenance and repair of interconnector-designated equipment (IDE). This central office equipment, which is used to terminate, multiplex, and demultiplex circuits, is selected by the interconnector and dedicated to the interconnector's use. The Bureau also required LECs to submit information concerning the charges for cable installation and cable support, cross-connection, power to IDE, and floor space.

B. Interconnector-Designated Equipment

5. In the *Virtual Collocation Order*, the Commission stated that the most expensive rate element in virtual collocation offerings is likely to be for equipment dedicated to the use of interconnectors, the IDE.[12] Because the purchase price of this equipment is an important factor in computing the LECs' cost-based rates and there will be different purchase prices for different types of equipment designated by interconnectors, the Commission required each LEC to include in its tariff filing a description of its methodology for computing rates for the IDE, such as optical line terminating multiplexers (OLTMs), based on

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[9] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, 10 FCC Rcd 3927 (Com. Car. Bur. 1995) (*Phase I Designation Order*).

[10] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Report and Order, 10 FCC Rcd 6375 (1995) (*Phase I Report and Order*).

[11] *Phase II Designation Order*, 10 FCC Rcd 11116.

[12] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5188 (1994) (*Virtual Collocation Order*).

the purchase price of the equipment.[13] The Commission concluded that this would ensure that the rates paid by all interconnectors are derived in the same manner, and would enable interconnectors to predict their equipment charges.[14] The Commission also explained that LECs could use financial arrangements other than purchasing IDE from third parties.[15] For instance, there are some LECs that offer to purchase virtual collocation equipment from interconnectors for a nominal amount (*e.g.*, $1.00) and make it available for resale to the interconnectors for the same amount.[16] In addition, the Commission explained that LECs are responsible for installing, maintaining, and repairing interconnector-designated virtual collocation equipment.[17]

III. ISSUES DESIGNATED FOR INVESTIGATION

6. SWB Transmittal No. 2524 provides that IDE "that fails will be replaced by the Telephone Company, unless instructed otherwise by the interconnector."[18] Transmittal No. 2524 also provides that the interconnector "will be responsible for the payment of all applicable nonrecurring charges... for the replacement of out-of-warranty designated equipment."[19] These issues were not addressed in the *Phase II Designation Order*. We therefore designate, as part of Phase II of the ongoing virtual collocation investigation, the additional issues set out below regarding SWB Transmittal No. 2524.

A. Pleadings

7. Petitions. MFS contends that SWB's provision that IDE "that fails will be replaced by the Telephone Company" is unreasonable on its face.[20] MFS states that SWB should be allowed to require replacement of IDE only if it demonstrates that equipment cannot be repaired at less cost.[21] Absent such a restriction, MFS argues that SWB could

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[13] *Id.*

[14] *Id.*

[15] *Id.* at 5189.

[16] *Id.*

[17] *Id.* at 5172.

[18] *SWB Tariff* at 25.2.1(C)(7).

[19] *Id.*

[20] *MFS Petition* at 5.

[21] *Id.*

impose grossly excessive IDE costs on interconnectors.[22] MFS maintains that this potential problem would be eliminated if the Commission required SWB to purchase or lease IDE from interconnectors for a nominal charge, as is the practice of other LECs.[23]

8. Reply. SWB explains that it is attempting to modify its tariff to address situations where IDE is outside of warranty, cannot be technically or economically repaired, and must be replaced.[24] SWB claims that, where possible, it will repair IDE consistent with its servicing obligations and maintenance practices. But where repair is not possible, SWB argues, the interconnector should bear the cost of replacing the IDE.[25]

B. Discussion

9. Under SWB's virtual collocation tariff, interconnectors pay a nonrecurring charge to cover the full cost of IDE, while SWB retains title to the equipment. Because interconnectors are SWB's competitors, we are concerned that SWB may have an incentive to increase interconnectors' costs of providing service to their customers by replacing equipment that has "failed" in cases where it would be more efficient to repair such equipment. We therefore direct SWB to explain how it defines "failed" equipment and the specific methodology it plans to use for determining whether equipment can be technically or economically repaired when it is outside the warranty period. As a part of this discussion, we require SWB to demonstrate that the methodology it uses for determining whether IDE should be repaired or replaced is effective and efficient.

10. We also require SWB to address certain other issues relating to the provision of IDE. In light of SWB's imposition of a nonrecurring charge to cover the full cost of IDE, we require SWB to state whether interconnectors should be entitled to the salvage value of IDE in the event that equipment that "fails" is retired. Further, we direct SWB to address whether its tariff should include a provision stating that SWB will inform interconnectors of the warranty period for IDE and the name of the manufacturer's representative if such information is requested by interconnectors to be able to plan ahead for possible out-of-warranty expenses. We also seek comment from other parties on these issues.

11. Finally, we require SWB to explain how it recovers in its rates the costs associated with repairing IDE. SWB must identify the annual costs that it recovers in recurring charges for repair of IDE and the amount of repair costs it recovers in nonrecurring charges. We also require SWB to explain fully the methodology it used to develop such

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[22] *Id.*

[23] *Id.*

[24] *SWB Response* at 14.

[25] *Id.* at 15.

repair costs and provide a detailed explanation of the rationale that underlies its development of repair costs. To support its explanation, SWB must file a copy of all cost studies and workpapers used to develop these costs.

IV. PROCEDURAL MATTERS

A. Filing Schedules

12. This investigation will be conducted as a notice and comment proceeding to which the procedures set forth below shall apply. SWB shall file a supplemental direct case addressing each issue designated above no later than 15 days after the release of this Order.

13. Pleadings responding to SWB's supplemental direct case may be filed no later than 7 days after filing the direct case and must be captioned "Opposition to Direct Case" or "Comments on SWB's Supplemental Direct Case." SWB may file a "Rebuttal" to oppositions or comments no later than 7 days after the filing of comments on or oppositions to the direct cases.

14. An original and seven copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, International Transcription Service, Room 246, 1919 M Street, N.W., Washington, D.C. 20554. Also, one copy must be delivered to the Competitive Pricing Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments should specify the docket number of this investigation.

15. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission may take into account information and ideas not contained in pleadings, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of reliance on such information is noted in the order.

B. Paperwork Reduction Act

16. The information established in this Order has been analyzed with respect to the provisions of the Paperwork Reduction Act of 1980,[26] as amended by the Paperwork Reduction Act of 1995,[27] and found to impose no new or modified form, or information collection requirements on the public. Implementation of any new or modified requirements

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[26] 44 U.S.C. §§ 3501-3520.

[27] *Id.*

will be subject to approval by the Office of Management and Budget as prescribed by the Act.

C. *Ex Parte* Requirements

17. *Ex Parte* contacts, (*i.e.*, written or oral communications that address the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until the commencement of the Sunshine Agenda period. The Sunshine Agenda period terminates when a final order is released and the final order is issued. Written *ex parte* contacts and memoranda summarizing oral *ex parte* contacts must be filed on the day of the presentation with the Secretary and Commission employees receiving each presentation. For other requirements, see generally Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. §§ 1.1200 *et seq.*

V. ORDERING CLAUSES

18. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, the issues set forth in this Order **ARE DESIGNATED FOR INVESTIGATION.**

19. **IT IS FURTHER ORDERED** that Southwestern Bell Telephone Company **SHALL INCLUDE**, in its direct case, a response to each request for information that it is required to answer in this Order.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Deputy Chief, Common Carrier Bureau